

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 5510 IN THE)	
NAME OF GARY R. AND CAROLYN)	PRELIMINARY ORDER
COLEMAN)	(Note: This preliminary order become final on 3-16-00 since
)	none of the parties filed exceptions to the preliminary
)	order)

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 12, 1975, the Department issued License No. **37-07198** as follows:

Source:	Groundwater
Priority:	January 29, 1973
Rate of diversion:	3.32 cubic feet per second ("cfs")
Volume:	664 Acre feet per annum ("AFA")
Point of diversion:	SW/4SE1/4 Section 35, T6S, R14E, B.M., Gooding County
Use:	Irrigation
Season of use:	March 15 to November 15
Place of use:	166 acres in SE1/4SW1/4 and SE1/4 Section 35, T6S, R14E, B.M., Gooding County

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On September 22, 1978, the Department issued License No. **37-07420** as follows:

Source:	Groundwater
Priority:	January 29, 1975
Rate of diversion:	2.06 cfs
Volume:	412 AFA
Point of diversion:	NESW Section 35, T6S, R14E, B.M., Gooding County
Use:	Irrigation
Season of use:	March 15 to November 15
Place of use:	103 acres in parts of sections 35, T6S, R14E, B.M., Gooding County

3. On March 18, 1980, the Department issued License No. **37-07545** as follows:

Source:	Groundwater
Priority:	February 1, 1977
Rate of diversion:	0.18 cfs
Volume:	36 AFA
Point of diversion:	NESW Section 36, T6S, R14E, B.M., Gooding County
Use:	Irrigation
Season of use:	March 15 to November 15
Place of use:	9 acres in parts of Section 35, T6S, R14E, B.M., Gooding County

4. On April 1, 1999, Gary R. Coleman and Carolyn F. Coleman ("applicant") filed Application for Transfer No. 5510 ("application") with the Department proposing to change the nature of use of a portion of water right nos. 37-07198, 37-07420 and 37-07545 from irrigation use to stockwater and commercial use in connection with a proposed dairy. More specifically, the applicant proposed to change 1.50 cfs and 225 AFA of the rights to be diverted year-round from two new wells to be drilled in the SESW Section 35, T6S, R14E, B.M. The proposed place of use is within Section 35, T6S, R14E, B.M. The applicant proposes a dairy with 2,300 milking cows and 700 non-milking cows.

5. The Department published notice of the application which was subsequently protested by Lee Halper.

6. On December 14, 1999, the Department conducted a hearing in the matter. The applicant was present and was represented by Robert E. Williams. The protestant was present and represented himself.

7. Issues identified by the protestant are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

8. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 - Coleman Dairy Site Vicinity Plan
- b. Applicant's Exhibit 2 - Coleman Dairy Site Vicinity Photo
- c. Applicant's Exhibit 3 - Coleman Dairy Site Map
- d. Applicant's Exhibit 4 - Letter dated April 12, 1999 to Gary Coleman from Jenifer Beddoes
- e. Applicant's Exhibit 5 - Dairy Waste System Calculations
- f. Applicant's Exhibit 6 - Stukenholtz Laboratory, Inc. Soil Texture Analysis
- g. Applicant's Exhibit 7 - Letter dated February 12, 1999 to Gary Coleman from Stephen N. Thompson together with soil data and a soils map
- h. Applicant's Exhibit 8 - Well Driller Reports
- i. Applicant's Exhibit 9 - USGS Observation Well Data
- j. Applicant's Exhibit 10 - Herd Water Use Data, Crop Water Use Data

- k. Applicant's Exhibit 11 - Livestock Confinement Operations - Water Requirements and Consumptive Use Worksheets
- l. Applicant's Exhibit 12 - Analysis of Water Right Transfer to Dairy dated November 22, 1999
- m. Applicant's Exhibit 13 - Well Interference Analysis Coleman Dairy
- n. Applicant's Exhibit 14 - Gooding County New CAFO Siting Permit
- o. Applicant's Exhibit 15 - Letter dated April 20, 1999 to Judy Daubner from Marv Patten
- p. Applicant's Exhibit 16 - Letter dated April 23, 1999 to Judy Daubner from Mick Hobdey
- q. Applicant's Exhibit 17 - Undated Letter from Alan Oppio
- r. Applicant's Exhibit 18 - Undated letter from Howard Morris
- s. Applicant's Exhibit 19 - An Evaluation of the Idaho Dairy Pollution Prevention Initiative 1996-1998 dated February 18, 1999

9. Gooding County has issued a New CAFO Siting Permit to the applicant for 3,035 animal units. (See Applicant's Exhibit 14).

10. The Department of Agriculture has provided preliminary data to the applicant for a nutrient management plan. (See applicant's Exhibit 4).

11. The proposed new dairy is located about 6 miles north and 3 miles west of Wendell, Idaho. The cost of feed which will be purchased locally for the new dairy is estimated to be in excess of two million dollars annually.

12. Berms have been built to channel runoff to a collection facility. Water is used several times before it is discharged to the liquid waste facility. Neighbors have agreed to take solid waste generated by the dairy.

13. The rate of diversion, consumptive use and total volume of water diverted will not be larger after the transfer than before the transfer. The dairy will dry up about 75 acres of irrigated land. (See Applicant's Exhibit 12).

14. Using an average annual pumping rate of 0.31 cfs, which is the continuous diversion rate to provide the required annual volume of water, and a pumping period of 80 days, the estimated drawdown in a well 1/4 mile distant from the dairy wells is 0.3 feet. Using a maximum pumping rate of 1.49 cfs for 12 days, the estimated drawdown in a well 1/4 mile distant from the dairy wells is about 0.6 feet. (See Applicant's Exhibit 13).

15. The protestant is concerned about the concentration of dairies and dairy cows in the general vicinity of the applicant's proposed dairy and the cumulative effect of the dairies upon air quality, water quality and the overall environment. The protestant believes the application is not in the local public interest.

16. The protestant does not own water rights or land in the vicinity of the proposed dairy.

17. The protestant did not introduce technical evidence to show that the proposal of the applicant will injure other water rights, will enlarge the use of water under the right being transferred, is not in the local public interest or is not consistent with the conservation of water resources within the state of Idaho.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. The proposed changes will not injure other water rights.

6. The proposed changes do not constitute an enlargement in use of the original right.

7. The proposed changed uses of water are as efficient as other similar uses of water for dairy uses within the area and are consistent with the local public interest and conservation of water resources within the state of Idaho.

8. The Department should approve the application with certain conditions.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5510 in the name of Gary R. Coleman and Carolyn F. Coleman is **APPROVED** subject to the following conditions:

1. The right holder shall design and construct the dairy facility to assure that it is capable of complying with the resource protection requirements of the Division of Environmental Quality of the Idaho Department of Health and Welfare and of the Idaho Department of Agriculture. Within one year of this approval and prior to diverting and using water under this approval, the right holder shall provide evidence to the Department that the facility has been constructed to meet these compliance requirements. The Director can extend the time for demonstrating compliance upon written request of the applicant and a showing of good cause therefor.

2. Prior to diversion of water under this approval, the right holder shall install measuring devices acceptable to the Department and shall measure and annually report to the Department the amount (cfs and AF) of water diverted under this transfer. Reporting through a measuring district or a ground water district will suffice although the Director may require more frequent measuring and reporting.
3. The place of commercial use authorized by this transfer includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first beneficially used in the dairy as authorized by this transfer.
4. The total instantaneous diversion of water from all points of diversion under transfer 5510 shall not exceed 1.5 cfs nor a combined annual volume of 225 AF.
5. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. Two points of diversion are located within the SESW Section 35, T6S, R14E, B.M.
7. The lands which will no longer be irrigated are as follows:

Section 35, T6S, R14E, B.M.
NESW - 29 acres (Part of 37-07420)
SESW - 40 acres (Part of 37-07198 - 37 ac and part of
37- 07545 - 3 acres)
SWSE - 6 acres (Part of 37-07545)
8. Commercial use is for a dairy barn located within the SESW Section 35, T6S, R14E, B.M.
9. Approval of this transfer does not preclude the opportunity for review of the validity of the water rights in the ongoing Snake River Basin Adjudication.
10. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Signed this 24th day of January, 2000.

_____/S/_____
L. GLEN SAXTON
Hearing Officer